

THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TERRY L. KNIGHT,

Plaintiff,

v.

WAL-MART STORES, INC.

Defendant.

No. C08-5746-RJB

**ANSWER TO PLAINTIFF'S
COMPLAINT**

COMES NOW Defendant Wal-Mart Stores, Inc. ("Wal-Mart" or "defendant") through its undersigned attorneys and answers plaintiff's Complaint as follows:

1. Answering paragraph 1.1 of the Complaint, defendant admits the allegations.

2. Answering paragraphs 1.2 of the Complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

3. Answering paragraph 1.3 of the Complaint, defendant admits the allegations.

4. Answering paragraphs 1.4 of the Complaint, defendant admits that plaintiff filed an accident report for a knee injury. Except as specifically admitted, defendant denies the remaining allegations.

5. Answering paragraphs 1.5 of the Complaint, defendant admits that plaintiff worked for defendant at its store located at 100 East Wallace Kneeland Blvd, Shelton (Mason

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1 County) Washington, from approximately June 6, 1996 to October 4, 2007. Except as
2 specifically admitted, defendant denies the remaining allegations.

3 6. Answering paragraphs 1.6 of the Complaint, defendant admits that plaintiff
4 was terminated from employment for using profanity on the sales floor and threatening other
5 associates. Except as specifically admitted, defendant denies the remaining allegations.

6 7. Answering paragraphs 1.7 of the Complaint, defendant avers that the
7 paragraph calls for a legal conclusion and therefore no response is required. To the extent that
8 a response is required, defendant denies the allegations.

9 8. Answering paragraph 1.8 of the Complaint, defendant denies the allegations.

10 9. Answering paragraphs 1.9 of the Complaint, defendant admits that plaintiff
11 received a copy of defendant's associate handbook and plaintiff acknowledged that he had
12 read the handbook. Except as specifically admitted, defendant denies the remaining
13 allegations.

14 10. Answering paragraph 2.1 of the Complaint, defendant realleges all allegations
15 of paragraphs 1 through 9 above.

16 11. Answering paragraph 2.2 of the Complaint, defendant denies the allegations.

17 12. Answering paragraph 3.1 of the Complaint, defendant realleges all allegations
18 of paragraphs 1 through 11 above.

19 13. Answering paragraph 3.2 of the Complaint, defendant denies the allegations.

20 14. Answering paragraph 4.1 of the Complaint, defendant realleges all allegations
21 of paragraphs 1 through 13 above.

22 15. Answering paragraph 4.2 of the Complaint, defendant admits that plaintiff
23 filed a Self-Insurer Accident Report W787389 for a knee injury with an alleged accident date
24 of 9/14/2002. Except as specifically admitted, defendant denies the remaining allegations.

25 16. Answering paragraph 4.3 of the Complaint, defendant denies the allegations.

26 17. Answering paragraph 4.4 of the Complaint, defendant denies the allegations.

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1 18. Answering paragraph 5.1 of the Complaint, defendant realleges all allegations
2 of paragraphs 1 through 17 above.

3 19. Answering paragraph 5.2 of the Complaint, defendant admits that it issued a
4 Notification of Restriction from Property to plaintiff. Except as specifically admitted,
5 defendant denies the remaining allegations.

6 20. Answering paragraph 5.3 of the Complaint, defendant admits that it opposed
7 plaintiff's application for unemployment benefits. Except as specifically admitted, defendant
8 denies the remaining allegations.

9 21. Answering paragraph 5.4 of the Complaint, defendant admits that it appealed
10 the decision by Employment Security to grant plaintiff unemployment benefits. Except as
11 specifically admitted, defendant denies the remaining allegations.

12 22. Answering paragraph 5.5 of the Complaint, defendant admits that the appeal
13 was denied. Except as specifically admitted, defendant denies the remaining allegations.

14 23. Answering paragraph 5.6 of the Complaint, defendant denies the allegations.

15 24. Answering paragraph 5.7 of the Complaint, defendant denies the allegations.

16 25. Answering paragraph 5.8 of the Complaint, defendant denies the allegations.

17 26. Answering Section VI "Damages" and paragraphs 6.1, 6.2, 6.3, 6.4, and 6.5 of
18 the Complaint, defendant denies the allegations.

19 27. Defendant denies plaintiff's prayer for relief and each and every remaining
20 allegation contained in plaintiff's Complaint.

21 BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES,
22 DEFENDANT ALLEGES AS FOLLOWS:

23 1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

24 2. Plaintiff has failed to mitigate his damages, if any, and has failed to avoid or
25 protect himself from avoidable consequences. Defendant is not responsible for any alleged
26 damages that plaintiff caused by his failure to minimize or eliminate his damages.

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1 3. Defendant is entitled to offset, against any claims for lost wages, any amounts
2 that plaintiff earned or received, or by the exercise of reasonable diligence would have earned
3 or received, during the period since termination of his employment.

4 4. Pending further discovery, plaintiff's claims are barred by the doctrines of
5 waiver, estoppel, ratification, laches, acquiescence, bad faith, unclean hands, statute of
6 frauds, statute of limitations, satisfaction, consent, agreement, offset, payment, and release.

7 5. Plaintiff's damages, if any, were caused by his own actions and/or failures to
8 act, and the actions and/or failures to act of third persons not under direction or control over
9 defendant.

10 6. Damages, if any, are to be apportioned according to the relative faults of all
11 who are found to be at fault.

12 7. Any recovery by plaintiff against defendant should be reduced or barred to the
13 extent due to plaintiff's faults.

14 8. Plaintiff was an at-will employee.

15 9. All employment decisions regarding or affecting plaintiff were based upon
16 legitimate, non-discriminatory, and reasonable business reasons that were in no way related to
17 Plaintiff's age or alleged "physical infirmity."

18 10. All employment decisions regarding or affecting plaintiff were based upon
19 legitimate, non-discriminatory, and reasonable business reasons that were in no way
20 retaliatory or based upon Plaintiff filing a worker's compensation claim or claim for
21 unemployment compensation.

22 11. Defendant had a good faith basis for its actions.

23 12. If any improper, illegal or discriminatory act were taken by any company
24 associate against plaintiff, it was outside the course and scope of that associate's employment,
25 contrary to company policies, and was not ratified, confirmed or approved by the company.
26 Thus, any such actions cannot be attributed or imputed to the company.

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1 13. Any improper, illegal or discriminatory actions by any company associate (if
2 any such actions occurred) were independent, intervening, and unforeseeable acts that were
3 not ratified, confirmed or approved by the company and, thus, cannot be attributed or imputed
4 to the company.

5 14. The Company did not have actual or constructive knowledge of any of the
6 alleged discriminatory acts alleged in plaintiff's Complaint at any time material to the
7 Complaint.

8 15. If plaintiff is able to show any discrimination or retaliation occurred (which
9 defendant denies), the company reserves the right to assert a mixed motive defense and that
10 defendant would have taken the same actions with regard to plaintiff even if the alleged
11 conduct had not occurred.

12 16. Plaintiff failed to avail himself of the opportunity to handle his complaint in
13 accordance with the company's policies.

14 17. Plaintiff's claims are barred by the Industrial Insurance Act, RCW Ch. 51.

15 18. Defendant provided reasonable accommodations to plaintiff.

16 19. Plaintiff was not a qualified individual with a disability.

17 20. Plaintiff was a direct threat to the workplace or himself, and thus was not
18 entitled to a reasonable accommodation and/or continued employment at the company.

19 21. Pending further discovery, all or part of plaintiff's claims and alleged damages
20 are barred by after-acquired evidence.

21 22. Plaintiff assumed the risk of any alleged injury.

22 23. Plaintiff's defamation, libel, and slander claims are barred because the
23 allegedly defamatory statements are true.

24 24. Plaintiff's defamation, libel, and slander claims are barred because there was
25 no publication to a third party.
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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2008, I caused to be served a copy of the foregoing **ANSWER TO PLAINTIFF'S COMPLAINT** on the following person(s) in the manner indicated below at the following address(es):

Jeffrey D. Stier, Of Counsel
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- ☒ by **CM/ECF**
☐ by **Electronic Mail**
☐ by **Facsimile Transmission**
☐ by **First Class Mail**
☐ by **Hand Delivery**
☐ by **Overnight Delivery**

s/Leah Burrus
Leah Burrus

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